Volume XXIII, Number 10 July 2006

The Bureau of Industry and Security Outreach and Educational Services Division Cosponsored by: Oklahoma District Export Coucil Presents

"Complying with U. S. Export Controls" and *"Intermediate Deemed Export"*

July 18-20, 2006 - Tulsa, Oklahoma Doubletree Hotel at Warren Place

Complying with U.S. Export Controls (July 18-19)

The two-day program is led by BIS's professional counseling staff and provides an in-depth examination of the Export Administration Regulations (EAR). The program will cover the information exporters need to know to comply with U.S. export control requirements on commercial goods. We will focus on what items and activities are subject to the EAR; steps to take to determine the export licensing requirements for your item; how to determine your export control classification number (ECCN); when you can export or reexport without applying for a license; export clearance procedures and record keeping requirements; Export Management System (EMS) concepts; and real life examples in applying this information. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your own company's export activities. This program is well suited for those who need a comprehensive understanding of their obligations under the EAR. Technical, policy, and enforcement professionals from BIS, as well as specialists from other agencies such as the Office of Foreign Assets Control will participate in certain programs.

Intermediate Deemed Export

(July 20)

This half-day program has been developed for exporters who have basic knowledge of the Export Administration Regulations and have a solid understanding of how to apply the regulations and to classify technology properly. This highly intensive program will integrate practical exercises and presentations about the appropriate sequence of analysis in assessing deemed export licensing requirements. In addition, time will be spent on discussing the current licensing policies and potential changes to them. Participants will learn how to find and use those sections of the EAR that apply to deemed export transactions. Topics covered will include how to determine when deemed export licenses are necessary and how to prepare supporting documentation that accompanies a license application. This workshop is perfect for an export compliance specialist working in industry, in university administration or in a government research laboratory.

About the Instructors

The instructors are experienced export policy specialists, engineers and enforcement personnel from BIS's Washington, D.C. headquarters and field offices, as well as representatives from other U.S. government agencies such as U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and Census Bureau's Office of Foreign Trade. The instructors will be available throughout the seminar to answer your questions on how the export regulations affect the export activities of your organization or client.

Location/Time/Transportation/Parking

The program will be held at the Doubletree Hotel at Warren Place, 6110 South Yale, Tulsa, Oklahoma. Registration and continental breakfast for the two-day program will begin at 7:30am on July 18, 2006. The two-day program will begin at 8:00am and end at 4:30pm on both days. Registration and continental breakfast for the half-day program will begin at 7:30am on July 20, 2006. The half-day program will begin at 8:00am and end at noon.

The Doubletree Hotel at Warren Place is located approximately 20 minutes (15 miles) south of the Tulsa International Airport. The Hotel provides complimentary transportation to and from the Tulsa International Airport. In addition, the Hotel provides a telephone at the baggage terminal so that guests may contact the Hotel upon their arrival to Tulsa. The Doubletree Hotel also provides complimentary covered parking in the garage, which connects to the Hotel.

Accommodations

A special conference rate of $66 (plus tax) for a single/double room has been arranged with the Doubletree Hotel at Warren Place, 6110 South Yale, Tulsa, Oklahoma. Please make your reservations directly with the hotel by calling (918) 495-1000 or (800) 222-8733. Mention ***"Oklahoma District Export Council"*** to receive the special conference rate.

Registration

Advance registration is required for the seminar and space is limited. The registration fee for the two-day Complying with U.S. Export Controls is $295.00 per person. The fee for the two-day Complying with U.S. Export Controls and the half-day Intermediate Deemed Export is $395.00 per person. These fees include continental breakfasts, coffee breaks, lunches and materials for the two-day or the two and a half day program. The fee for the half-day Intermediate Deemed Export program only is $125.00 per person. The fee includes continental breakfast, coffee break, and materials for the half-day program. The registration fee is not refundable after July 12, 2006. Substitutions may be made at any time. Registration will be accepted until Friday July 14, 2006, or until registration is filled. For information regarding registration, please contact Jim Williams at (918) 581-7650; Ashley Wilson at (405) 608-5302 or (800) 879-6552, extension 223; or by E-mail: oklahomacity.office.box@mail.doc.gov. **For secure on-line registration and credit card payment go to:** ***www.acteva.com/go/OkDECBISSeminar2006***. We accept Visa, MasterCard, Discover, and American Express. For off-line registration and to guarantee placement for this seminar make your check payable to the Oklahoma District Export Council and mail your check and registration to 301 N.W. 63rd Street, Suite 330, Oklahoma City, Oklahoma 73116. **For your convenience a registration form is included on page 3 of this newsletter.**

Other Questions?

For more information or questions on the topics to be covered, please call BIS's Outreach and Educational Services Division at (202) 482-6031 or contact either of our offices (918) 581-7650; (405) 608-5302 or (800) 879-6552, extension 223; or by E-mail: oklahomacity.office.box@mail.doc.gov.

Don't Let This Happen To You!

Export License Requirements

Many exports of items, including software and technology, require a license from BIS. It is the responsibility of the exporter to apply for a license when one is required under the EAR. License requirements for a particular transaction, as described in the EAR, are based on a number of factors, including technical characteristics of the item to be exported and the item's destination, end-user, and end-use. When determining whether a license is required for your transaction, you should be able to answer the following questions:

⇨*What is being exported?*
⇨*Where is the item being exported?*
⇨*Who will receive the item?*
⇨*How will the item be used?*

Preventative Measures You Can Take:

⇨*Check exporters and customers*
⇨*Check end users and end-uses*
⇨*Review Shipper's Export Declarations*

If you need assistance to determine whether the item you want to export requires a license you should:

1. Check the BIS Website at ***http://www.bis.doc.gov***, or

2. Call an export counselor at 202-482-4811 (Washington, DC) or 949-660-0144 (California) for counseling assistance.

Please note that, whether you are the exporter, freight forwarder, consignee, or other party to the transaction, you must address any red flags that arise because taking part in an export transaction where a license is required but not obtained may subject you to criminal or administrative liability.

Criminal/Administrative Case Example

The Violation: Company exported Night Ranger night vision devices to Japan and fourteen other countries, without the required BIS export licenses. Company sold the cameras to a Japanese company but transferred the cameras to a U.S. company in Florida knowing that the cameras were going to be exported to Japan. The foreign company and the domestic intermediary pleaded guilty and cooperated.

The Penalty: In the criminal case, company was sentenced to a $650,000 criminal fine and five years probation. In the related administrative case, company agreed to pay an administrative penalty of $223,000 and to a one-year suspended denial of export privileges.

License Conditions

To minimize the potential diversion or misuse of licensed exports, BIS adds conditions to nearly all export licenses. License conditions may, among other things, restrict the way an item is used after export, or it may require certain reports to be made by the exporter. The conditions are created through an inter-agency process that includes BIS and agencies at the Departments of State and Defense, among others. The use of license conditions allows the Government to approve license applications that might otherwise be denied. Once a license is issued, BIS seeks to ensure compliance with the conditions.

Criminal/Administrative Case Example

The Violation: Company failed to comply with the terms and conditions of BIS licenses that were granted to company for the export of high performance computers by not filing copies of certain documents with BIS after the exports occurred. Additionally, company exported computers to military end-users in the PRC and Egypt without the required BIS licenses and altered a document responsive to a subpoena, among other violations.

FOR SECURE ON-LINE REGISTRATION AND CREDIT CARD PAYMENT GO TO:
www.acteva.com/go/OkDECBISSeminar2006

Registration:

Complying with U. S. Export Controls and Intermediate Deemed Export

July 18-20, 2006

Doubletree Hotel at Warren Place
6110 South Yale Avenue
Tulsa, Oklahoma

❖ Make Checks Payable to Oklahoma District Export Council

Mail to: 301 N. W. 63rd St., Suite 330; Oklahoma City, OK; 73116

Name(s): ______________________________ Firm: ______________________________

Address(City/State/Zip): ____

Telephone/Fax: ___________________________ Website: ____________________

E-mail: _______________________________________ Number of Attendees: _________

Two-day Complying with U.S. Export Controls Seminar ($295.00 per peson): __________

Two-day Complying with U.S. Export Controls Seminar and
Half-day Intermediate Deemed Export Seminar ($395 per person): ___________________

Half-day Intermediate Deemed Export Seminar ($125 per person): ___________________

Amount Enclosed: $ ___________________

The Penalty: Company agreed to pay a $269,000 administrative penalty and to a one year denial of its export privileges. The denial of export privileges was suspended.

Deemed Exports

Most people think of an export as the shipment of a commodity from inside the United States to a foreign country, but this is only one type of export. Under the EAR, the release of technology or source code to a foreign national, even if the foreign national is in the United States, is also "deemed" to be an export to the home country or countries of the foreign national and may require a license under the EAR. Technology can be released through visual inspection, oral exchanges of information, or the application to situations abroad of personal knowledge or technical experience acquired in the United States. For example, the review of controlled technology by a graduate student, who is an alien with a valid visa, pursuant to a grant from a private company which will not release the study publicly, may require an export license or license exception since such review could be considered to be a "deemed export".

Criminal/Administrative Case Example

The Violations: Company released technical data to Chinese nationals who were brought to the United States from the PRC for technical training in the United States, without obtaining the required BIS licenses. Also, company exported extended temperature range programmable logic devices to the PRC without the required export licenses and exported the related technical data to the PRC without the required export licenses.

The Penalty: Company agreed to pay a $560,000 administrative penalty.

Mitigating Circumstance: Company voluntarily self-disclosed the violations and fully cooperated with the investigation.

State Sponsors of Terrorism

The United States maintains comprehensive export controls against countries that have been declared by the Secretary of State to be state sponsors of terrorism. Many exports to these countries, even of ordinary commercial items such as sunglasses or perfume that are not typically controlled to other countries, may require authorization from the U.S. Government. BIS or the Department of the Treasury's Office of Foreign Assets Control (OFAC), or in some cases both agencies together, work to enforce these controls. Trade with these destinations should be undertaken with extra caution.

Regional Considerations:

It is important to familiarize yourself with the restrictions that apply to the ultimate destination of your export. U.S. law in this area frequently changes in accordance with an evolving foreign policy. The following websites are good resources:

OFAC's website: http://www.treas.gov/offices/enforcement/ofac/

BIS's website: http://www.bis.doc.gov/

Criminal/Administrative Case Example

The Violation: Company attempted to ship interior window shade fabric through its parent company, in France, to Iran without prior authorization from OFAC as required by the EAR. Company sold the interior window shade fabric with knowledge that its ultimate destination was Iran and that the required U.S. government authorization would not be obtained.

The Penalty: Company agreed to pay a $17,500 administrative penalty and implement an export management system.

Transshipment and Re-exports

Parties to an export transaction cannot bypass the EAR by shipping items through a third country. The transshipment, re-export, or diversion of goods and technologies in international commerce may be a violation of U.S. law. For example, an exporter cannot bypass the U.S. embargo against Iran by shipping an item to a distributor in the United Kingdom and asking that distributor to transship the item to a customer in Iran. Under U.S. law, this would be considered an export to Iran, even though it does not go directly to that country, and both the U.S. exporter and the United Kingdom distributor could face liability.

Criminal/Administrative Case Example

The Violation: Company knowingly re-exported U.S.-origin pressure transducers from Singapore to Malaysia without the required BIS licenses.

The Penalty: Company agreed to pay a $40,000 administrative penalty.

Mitigating Circumstance: Company voluntarily self-disclosed the violations and cooperated fully in the investigation.

Freight Forwarder

Primary responsibility for compliance with the EAR generally falls on the "principal parties in interest" in a transaction, who are usually the U.S. seller and the foreign buyer. However, freight forwarders or other agents acting on behalf of the principal parties are responsible for their actions, including the representations they make by signing an export declaration or other export control document. To help avoid liability in an export transaction, agents and exporters must decide whether any aspect of the transaction raises red flags, inquire about those red flags, and ensure that suspicious circumstances are not ignored. Both the agent and the principal party are responsible for the correctness of each entry made on an export document. Good faith reliance on information provided by the exporter may excuse an agent's actions in some cases, but the careless use of pre-printed "No License Required" forms or unsupported entries can get an agent into trouble.

Criminal/Administrative Case Example

The Violation: A freight-forwarding company pled guilty to forwarding shipments to India despite being warned by Special Agents from the BIS Office of Export Enforcement on at least three occasions that such shipments would be in violation of BIS export controls designed to prevent nuclear proliferation.

The Penalty: In the criminal case, freight-forwarding company was sentenced to a $250,000 criminal fine and five years of probation. In the related administrative case, company agreed to pay an administrative penalty of $399,000.

"Catch-All" Controls

BIS controls exports of items not only based on their technical specifications, but also based on their intended end-use and end-user. The EAR impose license requirements on exports of items subject to the EAR if the exporter knows or has reason to know that any of the items will be used in an end-use of particular concern to the U.S. Government, such as a missile or nuclear weapons program. These controls are often referred to as "catch-all" controls because they apply to any item subject to the EAR, even if the item would not ordinarily require a license based on its technical specifications.

The U.S. Government has officially notified the public, through the Entity List published in Supplement Four to Part 744 of the EAR, that exports to certain end-users present an unacceptable risk of being diverted to an end-use of concern and require a license. While this List assists businesses in determining whether an entity poses proliferation concerns, it is not comprehensive. It does not relieve parties to an export transaction of their responsibility to determine the nature and activities of potential customers who may not be on the Entity List (see BIS's "Know Your Customer" Guidance in Supplement No. Three to Part 732 of the EAR, available on the BIS website).

The Entity List is published in the *Federal Register*. The *Federal Register* is the official source of information about organizations on BIS's Entity List. The Federal Register from 1995 to the present is available on the Government Printing Office Access Web site. The current Entity List can also be found on the BIS website at ***http://www.bis.doc.gov/***.

Criminal/Administrative Case Example

The Violation: Company exported and attempted to export shipments of nuclear pulse generators to the Department of Atomic Energy (DAE) and the Nuclear Power Corporation (NPC), in India, without the required licenses. At the time of the export, DAE and NPC were both on BIS's Entity List and exports to DAE and NPC required prior authorization.

The Penalty: In the criminal case, company was sentenced to a $300,000 criminal fine. In the related administrative case, company agreed to pay a $55,000 administrative penalty and to a five-year denial of export privileges. The denial of export privileges penalty was suspended. Further, two former employees of company pled guilty to misrepresenting and concealing facts on an export document and making a false statement on an export control document. Both were sentenced to criminal fines of $1,000, two years probation and 100 hours of community service, and were prohibited from engaging in or facilitating export transactions.

Denial of Export Privileges

BIS has the authority and discretion to deny all export privileges under the EAR of a particular domestic or foreign person or company. BIS may impose a denial of export privileges as a sanction in an administrative case, or as a result of a person's criminal conviction of certain statutes (e.g. the Arms Export Control Act), and may also impose temporary denials to prevent an imminent violation of the EAR. The standard terms of a BIS denial order are published in Supplement Two to Part 764 of the EAR.

BIS publishes the names of persons who have had their export privileges denied in the *Federal Register*. The *Federal Register* is the official source of information about denied persons. The *Federal Register* from 1995 to present is available on the Government Printing Office Access Web site. A current list of persons denied export privileges can also be found on the BIS website at http:/www.bis.doc.gov/.

Criminal/Administrative Case Example

The Violation: Individual violated a BIS Temporary Denial Order (a 180-day denial of export privileges issued to prevent an imminent violation of the EAR) by participating in an attempted export of items to the United Arab Emirates, and directing another exporter to handle one of his pending exports.

The Penalty: In the criminal case, individual was sentenced to a $25,000 criminal fine, and five months in prison, five months home confinement and twelve months supervised release. In the related administrative case, individual was ordered to pay a $121,000 administrative penalty and a twenty year denial of export privileges was imposed.

False Statement/ Misrepresentation of Fact

A party to an export transaction may be subject to criminal and/or administrative sanctions for making false statements to the U.S. Government in connection with an activity subject to the EAR. Most frequently, the false statements are made on an export document or to a federal law enforcement officer. Common types of false statements seen by the BIS are statements on a Shipper's Export Declaration that an export does not require a license (i.e., that it is "NLR") when in fact a license is required for the shipment, or statements that an export was shipped under a particular license number when in fact that license was for a different item. False statements that are made to the U.S. Government indirectly through another person, such as a freight forwarder, are still violations of the EAR.

Criminal/Administrative Case Example

The Violation: Company made false statements to the U.S. Government and violated conditions on export licenses that it had received for exports of Metal Organic Vapor Disposition (MOCVD) tools to the PRC. Further company knowingly exported MOCVD tools to Taiwan without the required export licenses, illegally serviced the tools, failed to file Shipper's Export Declarations, and failed to retain certain export control documents.

The Penalty: Company agreed to pay a $400,000 administrative penalty.

Mitigating Circumstances: Company voluntarily self-disclosed the violations and cooperated fully in the investigation.

Antiboycott Violations

The antiboycott provisions of the EAR prohibit U.S. persons from complying with certain requirements of unsanctioned foreign boycotts, including requirements that the exporter provide information about business relationships with a boycotted country or refuse to do business with persons on certain boycott lists. In addition, the EAR requires that U.S. persons report their receipt of certain boycott requests to the BIS. Failure to report receipt of covered boycott requests to BIS can be a violation of the EAR. Under the antiboycott provisions of the EAR, certain foreign subsidiaries of domestic U.S. companies are considered to be U.S. persons.

Criminal/Administrative Case Example

The Violation: Company violated the antiboycott provisions of the EAR when it provided answers to questions from a customer about its business with or in Israel and the business relationships of its parent company with or in Israel. Company also unlawfully agreed to refuse to do business with companies on lists maintained by Arab League countries that boycott Israel, and failed to report its receipt of boycott requests.

The Penalty: Company agreed to pay a $24,500 administrative penalty.

Successor Liability

Recent administrative cases have made clear that businesses can be held liable for violations of the EAR committed by companies that they acquire. Businesses should be aware that the principles of successor liability may apply to them and perform "due diligence" in scrutinizing the export control practices of any companies that they plan to acquire.

A properly structured due diligence review can determine whether an acquired company has violated any export laws. This review should examine the company's export history and compliance practices, including commodity classifications, technology exchanges, export licenses and authorizations, end-users, end-uses, international contracts, the status of certain foreign employees who have access to controlled technologies, and the target company's export policies, procedures and compliance manuals. Failure to properly scrutinize a company's export practices can lead to liability being imposed on the acquiring company.

Criminal/Administrative Case Example

The Violation: Company B (acquired by Company A) exported controlled Teflon-coated valves and pumps to Israel and Taiwan without the required export licenses from BIS. Company B failed to file a Shipper's Export Declaration for some of these shipments and filed Shipper's Export Declarations for others which falsely indicated that the shipments did not require an export license. Most of the violations that company A was liable for were committed by Company B prior to its acquisition by Company A. Under the principles of successor liability, Company A was liable for violations of export control laws committed by Company B.

The Penalty: Company A agreed to pay a $697,500 administrative penalty.

August 2006 Calendar of Events

Date	*Event*	*Contact*
August 8, 2006	Minority and Women's Breakfast Metro Tech Conference and Banquet Center, Oklahoma City	Aquilla Pugh 405/427-4444

U. S. Department of Commerce
International Trade Administration
District Office
301 N. W. 63rd Street, Suite 330
Oklahoma City, Oklahoma 73116

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